UNITED
NATIONS

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General Assembly
Security Council

Distr.
GENERAL

A/54/77
S/1999/365
31 March 1999

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-fourth session
Item 43 of the preliminary list*
THE SITUATION IN THE MIDDLE EAST

SECURITY COUNCIL
Fifty-fourth year

Letter dated 30 March 1999 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General

I refer to the letter addressed to you from the Palestinian Permanent Observer dated 25 March 1999 (A/53/879-S/1999/334), concerning General Assembly resolution 181 (II) of 29 November 1947.

General Assembly resolution 181 (II) was made null and void by the Arab States and the Palestinian leadership in the aftermath of its adoption on 29 November 1947. In statement after statement on the floor of the General Assembly, representatives of Egypt, Syria, Iraq and Saudi Arabia not only refused to comply with its recommendations but also subsequently admitted to the use of armed force to overthrow its provisions.

With the termination of the British Mandate over Palestine on 14 May 1948, the armies of seven Arab States illegally attacked the newly born State of Israel. United Nations Secretary-General Trygve Lie termed this act "the first armed aggression which the world had seen since the end of the [Second World] War". It should be noted that the Arab League actually included the rejection of the General Assembly resolution of 29 November 1947 as a formal justification for its invasion.

The United Nations Palestine Commission, in its report to the Security Council on 16 February 1948, viewed the armed Arab invasion as an act intended to nullify resolution 181 (II): "Organized efforts are being made by strong Arab elements inside and outside Palestine to prevent the implementation of the Assembly's plan of partition and to thwart its objectives by threats and acts of violence, including armed incursions into Palestinian territory ... This Commission now finds itself confronted with an attempt to defeat its purposes, and to nullify the resolution of the General Assembly."

* A/54/50.

The War imposed on Israel was particularly difficult for Jerusalem. By the end of May 1948, the Jewish Quarter of the Old City had fallen. Its residents were expelled. Ancient synagogues had been destroyed or desecrated. The rest of Jerusalem was put under siege and surrounded by invading armies on three sides. Only the convoys of the newly formed Israel Defence Forces provided food and water to Jerusalem's residents. No United Nations body took any action to protect Jerusalem at this critical time.

For these reasons, Israel's first Prime Minister David Ben-Gurion stated before the Knesset on 3 December 1949: "Thus we can no longer regard the United Nations resolution of 29th November as having any moral force. After the United Nations failed to implement its own resolution, we regard the resolution of the 29th November concerning Jerusalem to be null and void."

The fundamental act of international illegality was the invasion of the nascent State of Israel and the attempt to overturn a resolution of the General Assembly with armed force. That is why those seeking to critique Israel's position on the status of resolution 181 (II) are misdirected. For in fact, resolution 181 (II) was made irrelevant by the actions of the Arab States and the Palestinian leadership in 1948, whose refusal to accept the resolution altered the circumstances in the Middle East on which it was originally based.

By early 1949, with their invasion thwarted, Egypt, Lebanon, Syria and Transjordan entered into armistice agreements with the State of Israel. These agreements made no mention of 181 (II). Similarly, Security Council resolution 73 (1949) of 11 August 1949, which endorsed the armistice, made no reference to 181 (II). In short, from the perspective of Israel, resolution 181 (II) had been overtaken by the events of 1947-1949.

In order to respond to the new realities that emerged in the years and decades following the partition resolution, the United Nations abandoned the proposals contained in resolution 181 (II). In its place, the Security Council adopted resolutions 242 (1967) and 338 (1973) which provided a radically different formula for the settlement of the conflict. Indeed, this is the only formula that has been accepted by all concerned as the basis for permanent status negotiations.

In contrast, resolution 181 (II) has never been part of the agreed foundation for the peace process between Israel and the Palestinians. The letters of invitation to the Madrid Peace Conference of 1991 and the Oslo Agreements signed between Israel and the PLO expressly provide that permanent status negotiations are to be based on Security Council resolutions 242 (1967) and 338 (1973). No other United Nations resolution is cited. The Palestinians have thus affirmed that a permanent resolution of the Israeli-Palestinian conflict will be achieved by a negotiated settlement in West Bank and Gaza Strip territory that is the subject of those Security Council resolutions.

The resurrection of resolution 181 (II) by the PLO is a transparent effort to belatedly derive benefit from a resolution which the Palestinian leadership itself violently rejected 50 years ago. Repeated references to resolution 181 (II) are, moreover, part of an effort to completely alter the agreed terms of reference of the Arab-Israeli peace agreements, and thereby put the entire

peace process at risk. Finally, it seeks to broaden the parameters of the discussion of Jerusalem far beyond what was ever conceived in the Oslo Accords. Let it be clear that, in any future discussions over the status of Jerusalem, the position of the Government of Israel remains firm that Jerusalem will continue to be the undivided capital of Israel.

These attempts to revive the defunct resolution 181 (II) can be added to a worrying list of recent Palestinian efforts to depart from the agreed peace process framework. These efforts include threats to unilaterally declare a Palestinian State, in violation of repeated Palestinian undertakings to refrain from unilateral acts that alter the status of the territories pending the outcome of permanent status negotiations (Interim Agreement, article XXXI.7). They involve also Palestinian Authority activity in Jerusalem, which is expressly prohibited by the provisions of the Israeli-Palestinian Interim Agreement (article I.7).

If the peace process is to have any chance of success, the Palestinian side cannot be permitted to discard legal obligations whenever it is politically convenient to do so. The international community must insist that the Palestinians comply with the peace process framework to which they are committed and adhere to the legal undertakings they themselves have made.

I should be grateful if you would have this letter circulated as a document of the General Assembly, under item 43 of the preliminary list, and of the Security Council.

(Signed) Dore GOLD
Ambassador
Permanent Representative